

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4083 OF 2019

Shri Rameshreddy
Mutyamreddy Muttalwad
Age : 64 years, Occu: Business,
R/o H.No.118,
Ganesh Nagar Housing Society,
Nanded, Tq. & Dist. Nanded.

... PETITIONER

VERSUS

1. The State of Maharashtra,
through Secretary, Government of
Maharashtra, Home (Transport)
Department, Mantralaya,
Mumbai-400 032.
2. The Commissioner of State
Excise, Maharashtra State
Old Custom House, Mumbai-400 023
3. The Collector of Nanded
State Excise Department,
District Nanded.
4. Smt. Laxmibai Shriniwas Reddy
Age : 71 yrs, Occ: Household,
residing at Shashtri Nagar, "Nirmal"
Adilabad, Andhra Pradesh)
5. Smt. Lalitabai Muttamreddy
Muttalwad
Age : 68 yrs, Occ: Household,
residing at Kini, Tq. Bhokar, Dist. Nanded
6. Tirupat Reddy Muttamreddy
Muttalwad
Age : 61 yrs, Occ: Agri,
residing at Kini, Tq. Bhokar, Dist. Nanded
7. Smt. Raj Norsubai M. Muttalwad
Age : Major, Occ: Nil
R/o. Kini, Tq. Bhokar Dist. Nanded
since deceased.

... RESPONDENTS

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Advocate for Petitioner : Mr. V.D. Hon, Senior advocate i/b. Mr. A.V. Hon
Advocate for Respondent Nos. 1 to 3 : Mr. P.G. Borade
Advocate for respondent Nos.4 to 6 : Mr. V.R. Dhorde

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CORAM : MANGESH S. PATIL, J.
Reserved on : 23.08.2021
Pronounced on : 01.09.2021

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. The learned AGP and the learned advocate for the contesting respondents waive service. At the request of both the sides, the matter is heard finally at the stage of admission.

2. The petitioner by invoking the powers of this Court under Article 227 of the Constitution of India is taking exception to the order passed by the learned Minister dated 28.02.2019 in purported exercise of the powers of revision under Section 138 of the Maharashtra Prohibition Act, 1949 (herein after the Act). He has allowed the Revision and quashed and set aside the order passed by the Respondent No.2 - Commissioner of State Excise dated 25.11.2016 by which the latter had quashed and set aside the order passed by the Respondent No.3 - Collector dated 07.12.2010. The learned Collector had declared that after demise of the original licence holder of CL-III by name Muttamreddy, his two sons that is the petitioner and the respondent No.6 and the two daughters i.e. the respondent Nos. 4 and 5 are equally entitled to succeed to the CL-III licence.

3. The checkered history leading to the filing of the Writ Petition as is relevant can be summarized as under :

- i) Muttamreddy was holding a licence in Form CL-III issued

under the Act for Village Kini, Tq. Bhokar, District Nanded.

He submitted an application during his life time for transfer of the licence in the name of the petitioner on 17.10.2005. The respondent Nos. 4 to 7 his remaining son, two daughters and wife objected to such transfer. The statements of Muttamreddy were recorded by the concerned Inspector of the Central Excise Department of 26.10.2005 and later on by another Inspector on 22.11.2005. The respondent No.3 Collector based on such statements allowed the request and directed the licence to be transferred in the name of the petitioner.

- ii) Disputing the genuineness of the earlier application for transfer, Muttamreddy preferred an Appeal under Section 137 (2) of the Act before the Respondent No.2 Commissioner. By the order dated 06.11.2007 the Appeal was partly allowed and the matter was remanded to the Respondent No.3 Collector for decision afresh.
- iii) The petitioner sought to challenge this order of remand by preferring Writ Petition No.1360/2008 but withdrew it in lieu of the availability of the remedy of revision under Section 138 of the Act.
- iv) In the meanwhile, in view of such a dispute between the licence holder Muttamreddy and the petitioner and the other

respondents, the Collector suspended the licence having seen that Muttamreddy by Application dated 20.04.2006 had specifically disputed his signature on the Application under which the licence was initially transferred in the name of the petitioner.

- v) Noticing this and the fact of Muttamreddy having died on 17.10.2005, the learned Minister by the order dated 09.08.2008 directed the petitioner and the contesting respondents to obtain a succession certificate from the Civil Court and instead of suspending the licence, it was directed to be transferred in the joint name of the petitioner and the respondent No.7 since Muttamreddy had died on 17.10.2005 even while the dispute raised by him was not finally decided.
- vi) The petitioner challenged the order of the learned Minister by preferring Writ Petition No.5696/2010. With the consent of the parties, by way of some stop gap arrangement devised by the parties, petitioner was allowed to run the shop and in lieu thereof he was directed to pay a tentative share of Rs.20,000/- per month to the respondent Nos. 4 to 7 herein. The inquiry that was pending before the Collector was directed to be got decided expeditiously.
- vii) It is thereafter that a fresh inquiry was conducted and the Collector held all the sharers, the two sons and the two

daughters, to be entitled to equal share in the licence. It was challenged before the Commissioner who had set aside the order of the Collector and the learned Minister had restored the Order of the Collector by the Order impugned in this Writ Petition.

4. The submission of the learned Senior advocate Mr. Hon for the petitioner is that when the deceased Muttamreddy during his life time on his own had requested for transfer of the licence standing in his name, the contesting respondents had no locus to claim any share in it during his life time. Out of his own volition he had requested to transfer the licence in the name of the petitioner. His two statements were recorded, wherein, he was consistent in supporting the request and based on that the licence was rightfully directed to be transferred in the name of the petitioner. He would therefore submit that there was no reason or occasion to raise any dispute once such an order for transfer of the licence was passed. He would submit that the contesting respondent No.7 filed a complaint by expressing suspicion that the petitioner was trying to transfer the licence illegally. It is thereafter that the second statement of Muttamreddy was recorded on 26.10.2006 and he again confirmed his volition to transfer the licence in the name of the petitioner. Therefore when during his life time he had not only once but twice supported the request for transfer of the licence there was no reason to indulge in any further inquiry.

5. The learned Senior advocate would then submit that the order

passed by the learned Minister impugned in this petition is contrary to the provisions of law and clearly ignores the fact about deceased Muttamreddy on his own by recording his statement twice had requested for transfer of the licence which was strictly in accordance with Rule 28 of the Maharashtra Country Liquor Rules, 1973 framed under the Act which empowers the Collector to transfer a licence from one name to another name or admit or delete the name of any partner.

6. The learned Senior advocate would also submit that the impugned order is also in violation of the Circulars dated 06.07.1989, 25.02.1994 and 20.08.1996 which regulate the powers of the Licensing Authority to transfer the licences after demise of the original licence holder. He would precisely point to the circular dated 20.08.1996 which according to him permits a licence holder to seek transfer of a licence. In view of such state of affairs, the impugned order being contrary to the facts and the law is illegal and is liable to be quashed and set aside.

7. According to him the learned Commissioner while deciding the Appeal under Section 137(2) had noticed all the aforementioned facts and circumstances and had rightly quashed and set aside the Order of the Collector. The order passed by the respondent No.2 Commissioner was a well reasoned order and in the absence of concrete proof regarding fraud, the learned Collector was not entitled to direct the licence to be transferred in the name of all the co-sharers.

8. Per contra, the learned advocate Mr. Dhorde for the contesting

respondents would submit that there is no specific provision under the Act and the Rules framed thereunder which would enable a licence holder to transfer a licence during his life time. He would submit that the Circular dated 20.08.1996 has been issued under Section 139 of the Act and permits transfer of a licence to the heirs only after demise of the licence holder. When the Muttamreddy during his life time had specifically raised the objection that by practising fraud the petitioner had got the licence transferred, merely because he died during pendency of his Appeal, the factual scenario would not change. He did raise the objection to such transfer by asserting fraud and the matter was still under investigation. The learned advocate would submit that in any case, irrespective of the fraud or otherwise, when there was no provision to permit any such transfer during his life time, the initial order passed by the respondent No. 3 Collector transferring the licence in the name of the petitioner itself was illegal.

9. The learned advocate would further submit that when the Appeal of Muttamreddy was partly allowed and the matter was remanded in the year 2006, it is after a lapse of 12 years the objection is now being raised by the petitioner questioning the order of remand only because the Collector thereafter suspended the licence. Apart from the above state of affairs, the learned advocate would further submit that in view of the provisions of the Act, Rule 28 of the Maharashtra Country Liquor Rules and the Circular dated 20.08.1996 the petitioner who also holds another CL-III licence in the name of his wife as well as is a partner of a firm in which one Ms. Raeesa Begum

is another partner holding a similar licence, the petitioner is not entitled to seek any right by way of transfer of the licence or even a share as a legal heir of Muttamreddy.

10. Suffice for the purpose to observe that the question as to if initially the licence was transferred by practising fraud was a matter which remained to be decided during life time of Muttamreddy. For whatever reason, the matter reached a stalemate in as much as neither of the contesting parties sought it to be investigated.

11. The matter of issuance of licence is governed by the provisions of the Act, the Rules framed thereunder and even the general and special orders promulgated by the State Government under the General Powers delegated to it pursuant to the provision of Section 139 of the Act. Therefore even grant, transfer etc. of licences under the Act would also be governed by such general and special orders dated 06.07.1989, 25.02.1994 and 20.08.1996.

12. As can be seen, the first such Government order dated 06.07.1989 lays down various provisions and guidelines to meet different contingencies in Annexures A to D. Annexure 'A' provides for the modalities to be followed for restoration of a licence. Annexure 'B' provides for the modalities to be followed for shifting the place of businesses under licences. Annexure 'C' regulates admitting of partners by the licence holders and additions and deletions of the partners by the licence holders. Annexure 'D' provides for the manner in which the licence can be transferred.

13. Annexure 'D' clearly governs the situation in the matter in hand. It provides that a licence standing in the name of a person can only be transferred in the name of his legal heirs after demise of the licence holder and it also emphasizes that not otherwise. Meaning thereby that it clearly prohibits transfer of a licence during the life time of a licence holder. Again it also comes with a rider that if the heir of the deceased licence holder already holds a licence the licence cannot be transferred in the name of such a family member. Therefore, assuming for the sake of arguments that Muttamreddy during his life time had genuinely applied for transfer of the licence, still by virtue of such a regulation in the form of Annexure 'D' to the Government order dated 06.07.1989 promulgated under enabling provision contained in Section 139 of the Act, the then Collector could not have allowed the Application directing transfer of the licence in the name of the petitioner during life time of Muttamreddy.

14. The learned Senior advocate Mr. Hon would submit that these Government orders are only administrative orders and would not have the sanctity of law.

15. I am afraid, when the Government Orders have been issued pursuant to the provision of Section 139 of the Act, these cannot be branded as merely administrative orders and would not partake a law. It is to be noted that the first Government Order dated 06.07.1989 was later on modified by a second Government Order dated 25.02.1994 but even in that change, while making a provision for regulating transfer of the licences, it

has been specifically laid down that a licence can be transferred after demise of the licence holder in the name of his heirs and if there is a dispute amongst them, the heirs can be asked to enter into a partnership or the dispute may be got resolved from a Civil Court and till the time the dispute is resolved by the Civil Court, the licence is to be suspended. It is therefore also clear that no error was committed by the Collector whose order has been restored by the impugned order, merely holding all the four heirs of Muttamreddy to be entitled to succeed to the licence.

16. In fact this was the direction issued by the learned Minister at the interim stage by passing the Order dated 16.03.2018. Since the petitioner and the contesting respondents apparently could not get the dispute resolved, the learned Minister by the impugned order restored the order of the Collector dated 07.12.2010 pursuant to the Heirship Certificate obtained from the Civil Court dated 03.10.2013, wherein, the two sons that is the petitioner and the respondent No.6 and the two daughters i.e. the respondent Nos. 4 and 5 to be the persons entitled to succeed to the licence standing in the name of Mr. Muttamreddy.

17. Having considered the matter from all the aforementioned aspects, the impugned order does not suffer from any illegality.

18. The Writ Petition is dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)